GPN-J.332-ARCHB-8.94-1310500-ALA4 Spl-H.C.A.S.C.D.79e

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO. 6308 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.)

Court's or Judge's orders

Mr. Vinod Jadhav for Petitioenr.

Mrs. S.S. Bhende, A.G.P. for Respondnet No. 1.

Mr. R.D. Rane, for Respondent No. 3.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : FEBRUARY 10, 2005

P.C.

. The Petitioner was appointed to the school run by Respondent No. 2 and she has been serving there for some time, according to Petitioner with artificial breaks. It is contended that as she has served for the long period, she is eligible for regularisation in the said post on the date of completion of two years of service. It is further contended by the Petitioner that her appointment is based n rule 36 of the Bombay Primary Educational Rules, 1949 and therefore, her appointment is regular appointment.

. On behalf of the Respondent NO. 3 an affidavit has been filed by Mr. Chandrakant S. Kashid, Administrative Officer. In the said affidavit it is pointed out that the Petitioner was initially appointed on temporary basis. She had never been appointed as a teacher. Pursuant to the advertisement issued on 27.7.2001, March, 2002 and 11.11.2003 for the post of Assistant Teachers, petitioner had applied but was not selected. The Petitioner had also applied for the post of Assistant Teacher to the Primary Selection Board. She was also not selected there. As there were leave vacancies, the petitioner was continued from time to time and was discontinued as there was no longer vacancy. Regarding grievance of the Petitioner that three others appointed along with petitioner had been regularised, it has been explained in Paragraph 4 of the affidavit, that these teachers were appointed by the District Primary Teaching Selection Board as against the approved clear post by the Government. The Petitioner was not selected but has been appointed only in leave vacancies.

. In so far as reliance on Rule 36 is concerned, we do not find the said rule 36 of the Bombay Primary Education Rules, 1949 to be the source for recruitment. At the highest these are provisions whereby the details of staff, permanent or temporary has to be maintained showing their designation, grades, pay and nature of appointment. The recruitments to these posts necessarily has to be done in terms of the recruitment rules as applicable. Therefore, rule 36 is not power or source for recruitment of the teachers. Considering the above, we find no merit in this petition, which is accordingly rejected.

. We make it clear that if there be temporary vacancy available with Respondent, they can consider the petitioner for temporary appointment considering her past services.

(F.I.REBELLO,J.)

(S.P.KUKDAY,J.)